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OFFICE OF PETITIONS

In re Application of :
Perras, et al. :
Application No. 09/916,132 : ON PETITION
Filed: July 25, 2001 :
Attorney Docket No. 426882000700 :

This is a decision on the petition to revive under 37 CFR 1.137(b), pursuant to 37 CFR 1.137(f), filed May 6, 2003.

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of a PCT international application filed on July 24, 2002. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Applicant filed a "Request to Rescind Previous Nonpublication Request" on July 25, 2002 (Certificate of Mailing under 37 CFR 1.8 dated July 19, 2002, however, the rescission request was not eligible for the benefits of 37 CFR 1.8.¹). The rescission request did not provide notice of the PCT filing. Accordingly, as the rescission was not made until after the filing of the PCT application, applicant was required by 35 U.S.C. 122(b)(2)(B)(iii) to provide notice of the PCT filing not later than forty-five days after the date the PCT application was filed to avoid abandonment of the application.²

¹ See "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv)", available at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm>.

² See id.

In view of the above, this application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

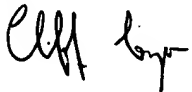
- (1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request, which sets forth a projected publication date of November 13, 2003, accompanies this decision on petition.

The application is being forwarded to Technology Center 3600, Group Art Unit 3623, for examination.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions

Enc: Notice Regarding Rescission of Nonpublication Request
and Notice of Foreign Filing (2 pages)